

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE BILL 741

Short Title: Shift Workers' Bill of Rights. (Public)

Sponsors: Representatives Brockman, Baskerville, Harrison, and Fisher (Primary Sponsors).

For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Rules, Calendar, and Operations of the House.

April 15, 2015

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE SHIFT WORKERS' BILL OF RIGHTS TO ENSURE THE FAIR
3 SCHEDULING AND TREATMENT OF SHIFT WORKERS AND PART-TIME
4 EMPLOYEES.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** Chapter 95 of the General Statutes is amended by adding a new
7 Article to read:

8 "Article 2B.

9 "Shift Workers' Bill of Rights.

10 "**§ 95-25.30. Title.**

11 This Article shall be known and may be cited as the "Rights of Shift Workers' Act."

12 "**§ 95-25.31. Findings; purpose.**

13 (a) The General Assembly finds that:

- 14 (1) Erratic and on-call scheduling practices have become pervasive in some
15 businesses, particularly in stores, restaurants, and bars.
- 16 (2) Many employees working shifts experience significant fluctuations in their
17 work hours from week to week and month to month.
- 18 (3) Many businesses use computer software that automatically generates work
19 schedules for their employees. The schedules generated by such software are
20 frequently erratic and unpredictable and provide employees with minimal
21 notice of their upcoming shifts. Many employees are impacted by
22 unpredictable scheduling practices such as frequent and last-minute changes
23 to their work schedules and use of "on-call" scheduling.
- 24 (4) Unpredictable scheduling practices and last-minute work schedule changes
25 cause workers who are already struggling with low wages to live in a
26 constant state of insecurity about when they will work or how much they
27 will earn on any given day.
- 28 (5) Unpredictable work scheduling practices are detrimental to employees and
29 their families because they:
- 30 a. Lead to income instability, making it hard for employees to plan their
31 finances and obtain economic security.
- 32 b. Create work-family conflicts that make it difficult for employees to
33 plan their child care, caregiving duties, and transportation.



1 c. Prevent part-time employees from pursuing educational opportunities
2 or holding a second or third job that such workers may need to make
3 ends meet. Women are more likely than men to work part-time and
4 experience unpredictability in their work schedules. Employers
5 sometimes treat part-time employees less favorably than full-time
6 employees.

7 (b) The purpose of this Article is to provide shift workers with more predictable, stable
8 work schedules that are essential to their ability to earn a living and ensure a healthy and decent
9 life for themselves and their families and to ensure that part-time employees and shift workers
10 are treated fairly and equally compared to their full-time counterparts.

11 **"§ 95-25.32. Definitions.**

12 The following definitions apply in this Article:

13 (1) Employee. – A person employed by an employer.

14 (2) Employer. – Any person that owns or operates a business with 20 or more
15 employees in the State that employs shift workers, including corporate
16 officers or executives, who directly or indirectly or through an agent or any
17 other person, including corporate officers or executives, who directly or
18 indirectly or through an agent or any other person, including through the
19 service of a temporary service or staffing agency or similar entity, employs
20 or exercises control over the wages, hours, or working conditions of any
21 individual. For the purpose of calculating the 20-employee threshold
22 referenced herein, employees performing work in other businesses in the
23 State that are owned or operated under the same trade name by the same
24 employer shall be counted. Notwithstanding the foregoing definition,
25 "employer" does not include a nonprofit corporation or governmental entity.

26 (3) Full-time. – Thirty-five or more hours of work in each workweek.

27 (4) On-call shift. – Any shift for which an employee must, less than 24 hours in
28 advance of the start of the shift, either contact the employer or wait to be
29 contacted by the employer to learn whether the employer requires the
30 employee to report to work for the shift.

31 (5) Part-time. – Fewer than 35 hours of work in each workweek.

32 (6) Shift worker. – An employee who, on a regular, rotating, or intermittent
33 basis, works an evening or night for an employer who maintains a work
34 schedule beyond the day shift. The term also includes any employee who
35 works on a day shift whose work schedule is subject to change on a regular,
36 rotating, or intermittent basis.

37 **"§ 95-25.33. Advance notice of work schedules and schedule changes.**

38 (a) Initial Estimate of Minimum Hours. – Prior to the start of employment:

39 (1) An employer shall provide a new employee with a good-faith estimate in
40 writing of the employee's expected minimum number of scheduled shifts per
41 month and the days and hours of those shifts. The estimate shall not include
42 on-call shifts. The estimate shall not constitute a contractual offer and the
43 employer shall not be bound by the estimate.

44 (2) The employee may request that the employer modify the proposed work
45 schedule provided under subdivision (1) of this subsection. The employer
46 shall consider any such request and in its sole discretion may accept or reject
47 the request, provided that the employer shall notify the employee of its
48 determination prior to the start of employment.

49 (b) Two Weeks' Notice of Work Schedules. – An employer shall provide its employees
50 with at least two weeks' notice of their work schedules by doing one of the following at least
51 every 14 days (on a "biweekly schedule"):

- 1 (1) Posting the work schedule in a conspicuous place at the workplace that is
2 readily accessible and visible to all employees.
- 3 (2) Transmitting the work schedule by electronic means, so long as all
4 employees are given access to the electronic schedule at the workplace. For
5 new employees, an employer shall provide the new employee on his or her
6 first day of employment with an initial work schedule that runs through the
7 date that the next biweekly schedule for existing employees is scheduled to
8 be posted or distributed; thereafter, the employer shall include the new
9 employee in an existing biweekly schedule with other employees. For all
10 employees, the work schedule shall include any on-call shifts, where
11 applicable. If the employer changes the work schedule after it is posted or
12 transmitted, the changes shall be subject to the notice and compensation
13 requirements set forth in subsection (c) of this section.

14 (c) Notice and Compensation for Schedule Changes. – An employer shall provide an
15 employee notice of any change to the employee's schedule that has been posted or transmitted
16 pursuant to subsection (b) of this section. The employer shall provide such notice by in-person
17 conversation, telephone call or e-mail, text message, or other electronic communication. This
18 notice requirement shall not apply to any schedule changes that the employee requests, such as
19 employee-requested sick leave, time off, shift trades, or additional shifts.

20 (d) Predictability Pay for Schedule Changes. – Subject to the exceptions in subsection
21 (f) of this section, an employer shall provide an employee with the following compensation per
22 shift for each previously scheduled shift that the employer moves to another date or time or
23 cancels, or each previously unscheduled shift that the employer requires the employee to come
24 into work:

- 25 (1) With less than seven days' notice but 24 hours or more notice to the
26 employee, one hour of pay at the employee's regular hourly rate;
- 27 (2) With less than 24 hours' notice to the employee, two hours of pay at the
28 employee's regular hourly rate for each shift of four hours or less; and
- 29 (3) With less than 24 hours' notice to the employee, four hours of pay at the
30 employee's regular hourly rate for each shift of more than four hours.

31 Where the employee is required to come into work, the compensation mandated by this
32 subsection shall be in addition to the employee's regular pay for working that shift. This
33 subsection does not apply to on-call shifts.

34 (e) Pay for On-Call Shifts. – Subject to the exceptions in subsection (f) of this section,
35 an employer shall provide an employee with the following compensation for each on-call shift
36 for which the employee is required to be available but is not called in to work:

- 37 (1) Two hours of pay at the employee's regular hourly rate for each on-call shift
38 of four hours or less; and
- 39 (2) Four hours of pay at the employee's regular hourly rate for each on-call shift
40 of more than four hours.

41 This subsection shall not apply when the employee is in fact called in for the on-call shift or
42 the employer provides the employee with 24 hours or more notice that the on-call shift has been
43 cancelled or moved to another date or time.

44 (f) Exceptions. – The requirements in subsections (d) and (e) of this section do not
45 apply under any of the following circumstances:

- 46 (1) Operations cannot begin or continue due to threats to employees or property
47 or when civil authorities recommend that work not begin or continue.
- 48 (2) Operations cannot begin or continue because public utilities fail to supply
49 electricity, water, or gas, or there is a failure in the public utilities or sewer
50 systems.

1 (3) Operations cannot begin or continue due to an Act of God or other cause not
2 within the employer's control, for example, an earthquake or a state of
3 emergency declared by the Governor.

4 (4) Another employee previously scheduled to work that shift is unable to work
5 due to illness, vacation, or employer-provided paid or unpaid time off where
6 the employer did not receive at least seven days' notice of the absence.

7 (5) Another employee previously scheduled to work that shift has not reported
8 to work on time or is fired, sent home, or told to stay home as a disciplinary
9 action.

10 (6) The employer requires the employee to work overtime (i.e., mandatory
11 overtime).

12 (7) The employee trades shifts with another employee or requests from the
13 employer a change in shift, shifts, hours, or work schedule.

14 (g) Greater Notice Permitted. – Nothing in this section shall be construed to prohibit an
15 employer from providing greater advance notice of employees' work schedules or changes in
16 schedules than that required by this section.

17 **"§ 95-25.34. Equal treatment for part-time employees.**

18 (a) Hourly Wage. – Employers shall provide part-time employees with the same
19 starting hourly wage as that provided to starting full-time employees who hold jobs that require
20 equal skill, effort, and responsibility and that are performed under similar working conditions,
21 provided that hourly pay differentials between part-time and full-time employees are
22 permissible if such differentials are based on reasons other than the part-time status of the
23 employee, such as a seniority system, merit system, system which measures earnings by
24 quantity or quality of production, performance, or responsibilities. This subsection does not
25 affect the minimum hourly requirements for receipts of benefits, including, but not limited to,
26 health care benefits.

27 (b) Access to Time Off. – Employers shall provide part-time employees with the same
28 access to employer-provided paid and unpaid time off as that afforded to full-time employees
29 for the same job classification. A part-time employee's eligibility for employer-provided paid or
30 unpaid time off may be prorated based on the number of hours that the part-time employee
31 works.

32 (c) Eligibility for Promotions. – Employers shall provide part-time employees with the
33 same eligibility for promotions as that afforded to full-time employees for the same job
34 classification, provided that an employer may condition eligibility for promotion on the
35 employee's availability for full-time employment and on reasons other than the part-time status
36 of the employee, such as nature and amount of work experience.

37 **"§ 95-25.35. Notice of employee rights.**

38 (a) Notices. – The Commissioner of Labor shall no later than the effective date of this
39 Article, publish and make available to employers, in English, Spanish, and all languages
40 spoken by more than five percent (5%) of the State's workforce, a notice suitable for posting by
41 employers in the workplace informing applicants and employees of their rights under this
42 Article. The Commissioner shall update this notice on December 1 of any year in which there is
43 a change in the languages spoken by more than five percent (5%) of the State's workforce.

44 (b) Posting. – Employers shall post the notice described in subsection (a) of this section
45 in a conspicuous place at every workplace, jobsite, or other location in the State under the
46 employer's control frequently visited by its employees. The notice shall be posted in English,
47 Spanish, and any language spoken by at least five percent (5%) of the employees at the
48 workplace, jobsite, or other location at which it is posted.

49 **"§ 95-25.36 Records; retention requirements.**

50 (a) Records. – Employers shall retain work schedules and payroll records pertaining to
51 employees for three years and shall allow the Department of Labor access to such records, with

1 appropriate notice and during business hours, to monitor compliance with the requirements of
2 this Article.

3 (b) Access. – The Commissioner of Labor or that officer's designee shall have access to
4 all places of labor subject to this Article during business hours to inspect books and records,
5 interview employees, and investigate such matters necessary or appropriate to determine
6 whether an employer has violated any provisions of this Article.

7 (c) Presumption. – Where an employer does not maintain or retain adequate records
8 documenting compliance with this Article or does not allow the Department of Labor
9 reasonable access to such records, it shall be presumed that the employer did not comply with
10 this Article, absent clear and convincing evidence otherwise.

11 **"§ 95-25.37. Exercise of rights protected; retaliation prohibited.**

12 (a) It is unlawful for an employer or any other person to interfere with, restrain, or deny
13 the exercise of, or the attempt to exercise, any right protected under this Article.

14 (b) It is unlawful for an employer to discharge, threaten to discharge, demote, suspend,
15 or otherwise take adverse employment action against any employee in retaliation for exercising
16 rights protected under this Article. These rights include but are not limited to:

17 (1) The right to request a modification to the initial proposed work schedule.

18 (2) The right to inform any person about an Employer's alleged violation of this
19 Article.

20 (3) The right to file a complaint with the Department of Labor alleging a
21 violation of this Article.

22 (4) The right to cooperate with the Department of Labor or other persons in the
23 investigation or prosecution of any alleged violation of this Article.

24 (5) The right to oppose any policy, practice, or act that is unlawful under this
25 Article.

26 (6) The right to inform any person of his or her rights under this Article.

27 **"§ 95-25.38. Investigation; enforcement.**

28 (a) Authority. – The Commissioner of Labor is authorized to take appropriate steps to
29 enforce and coordinate enforcement of this Article, including the investigation of any possible
30 violations of this Article.

31 (b) Determination of Violation and Penalties. –

32 (1) Where the Commissioner has reason to believe that a violation has occurred,
33 it may order any appropriate temporary or interim relief to mitigate the
34 violation or maintain the status quo pending completion of a full
35 investigation.

36 (2) After investigating a possible violation of this Article, and providing the
37 employer the opportunity to respond to the allegations, if the Commissioner
38 determines that a violation has occurred, it may issue a determination of
39 violation. The determination of violation shall identify the violation and the
40 factual basis for the determination. The Commissioner shall serve the
41 determination of violation on the employer by U.S. Mail and the date of
42 service shall be the date of mailing. In the determination of violation, the
43 Commissioner may order any appropriate relief, including, but not limited
44 to, requiring the employer to offer payment of lost wages to the employee or
45 person whose rights under this Article were violated, and the payment of an
46 additional sum as an administrative penalty in the amount of fifty dollars
47 (\$50.00) to each employee or person whose rights under this Article were
48 violated for each day that the violation occurred or continued. To
49 compensate the State for the costs of investigating and remedying the
50 violation, the Commissioner may also order the violating employer to pay to
51 the State an amount that does not exceed its enforcement costs.

- 1 (c) Appeal Procedure. – An employer may appeal from a determination of violation in
2 accordance with the following procedures:
- 3 (1) Any appeal shall be filed in writing by the party filing the appeal within 15
4 days of the date of service of the determination of violation. The appellant
5 shall file the appeal with the North Carolina Office of Administrative
6 Hearings and serve a copy on the Commissioner. Failure by the appellant to
7 file a timely, written appeal shall constitute concession to the violation, and
8 the violation shall be deemed final upon expiration of the 15-day period.
- 9 (2) Following the filing of the appeal and service of a copy on the
10 Commissioner, the Department of Labor shall promptly afford the appellant
11 an opportunity to meet and confer in good faith regarding possible resolution
12 of the determination of violation in advance of further proceedings under
13 this subsection, with the intention that such meeting occur within 30 days of
14 the date the appeal is filed if feasible.
- 15 (3) After the expiration of 30 days following the date the appeal is filed, any
16 party may request in writing, with concurrent notice to all other parties, that
17 the Chief Administrative Law Judge appoint a hearing officer to hear and
18 decide the appeal. If no party requests appointment of a hearing officer, the
19 notice of violation shall be deemed final on the 60th day after the date the
20 appeal is filed.
- 21 (4) Within 15 days of receiving a written request for appointment of a hearing
22 officer, the Chief Administrative Law Judge shall appoint an impartial
23 hearing officer who is not part of the Agency and immediately notify the
24 Agency and appellant, and their respective counsel or authorized
25 representative, if any, of the appointment. The appointed hearing officer
26 shall be an Administrative Law Judge with not fewer than two years'
27 experience in labor or employment law or wage and hour matters, or an
28 attorney with not fewer than five years' experience in labor or employment
29 law or wage and hour matters.
- 30 (5) The hearing officer shall promptly set a date for a hearing. The hearing must
31 commence within 45 days of the date of the Chief Administrative Law
32 Judge's notice of appointment of the hearing officer and conclude within 75
33 days of such notice. The hearing officer shall conduct a fair and impartial
34 evidentiary hearing in conformance with the time limitations set forth in this
35 subdivision and in any applicable rules and regulations, so as to avoid undue
36 delay in the resolution of any appeal. The hearing officer shall have the
37 discretion to extend the times under this subdivision and any time
38 requirements under any applicable rules and regulations, only upon a
39 determination of a good cause.
- 40 (6) The appellant shall have the burden of proving by a preponderance of the
41 evidence that the basis for the determination of violation or the amount of
42 lost wages, interest, or penalty payments at issue in the appeal is incorrect.
- 43 (7) Within 30 days of the conclusion of the hearing, the hearing officer shall
44 issue a written decision affirming, modifying, or dismissing the
45 determination of violation. The decision of the hearing officer shall consist
46 of findings and a determination. The hearing officer's findings and
47 determination shall be the final administrative determination.
- 48 (8) The appellant may appeal a final administrative determination to the Wake
49 County Superior Court.
- 50 (9) Failure to appeal a determination of violation shall constitute a failure to
51 exhaust administrative remedies, which shall serve as a complete defense to

1 any petition or claim brought by the employer against the State regarding the
2 determination of violation.

3 **"§ 95-25.39. No limitation of other rights and remedies; severability.**

4 (a) This Article does not in any way limit the rights and remedies that the law otherwise
5 provides to employees, including, but not limited to, the rights to be free from wrongful
6 termination and unlawful discrimination.

7 (b) If any portion of this Article, or any application thereof to any person or
8 circumstance, is held to be invalid or unconstitutional by a decision of a court of competent
9 jurisdiction, that decision shall not affect the validity of the remaining portions or applications
10 of the Article.

11 (c) Nothing in this Article shall be interpreted or applied so as to create any right,
12 requirement, power, or duty in conflict with any federal or State law."

13 **SECTION 2.** This act becomes effective January 1, 2016.